

46 Am. Jur. 2d Judges § 114

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

3. Relationship as Grounds for Disqualification

a. Relationship to Parties or Persons Interested

§ 114. Who are parties to which judge is related so as to require disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification, 10 A.L.R.2d 1307](#)

[Disqualification of judge under 28 U.S.C.A. sec. 455\(b\)\(5\)\(iii\), where judge or his or her spouse, or certain of their relatives, is known to have an interest that could be affected by the proceeding, 54 A.L.R. Fed. 855](#)

As to the proper construction of the term "party" in statutes disqualifying a judge who is related to either party within certain specified degrees of consanguinity or affinity, in some jurisdictions, the word "party" is limited to persons who are actually parties of record, and thus disqualification is not required simply because a judge is related to some person who is or may be interested in the case or affected by the judgment.¹ Other jurisdictions construe the term to include anyone whose financial or pecuniary interest may be directly affected by the suit, although he or she is not a party of the record and not bound by the judgment.² The federal statute regarding the disqualification of judges includes persons who have an interest that could be substantially affected by the outcome of the proceeding.³ The Code of Judicial Conduct includes persons who have more than a de minimis interest that could be substantially affected by the proceeding.⁴ Under these latter authorities, a person not named as

a party who owns property, or will be liable, in community with a named party is directly interested,⁵ and an unnamed partner is directly interested with a named partner.⁶

Observation:

In multiparty actions, the interest of unnamed relatives should not only be direct but should also be substantial in order to disqualify a judge. If this were not the rule, judgments in class suits and those with multitudes of parties would be subject to attack on the grounds of disqualification of the judge for subsequently discovered relationships between him or her and individuals having some interest in the matter.⁷

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Footnotes

- 1 [Blake v. Gilbert](#), 702 P.2d 631 (Alaska 1985) (overruled on other grounds by, [Bibo v. Jeffrey's Restaurant](#), 770 P.2d 290 (Alaska 1989)).
- 2 [Blake v. Gilbert](#), 702 P.2d 631 (Alaska 1985) (overruled on other grounds by, [Bibo v. Jeffrey's Restaurant](#), 770 P.2d 290 (Alaska 1989)); [State v. Logan](#), 236 Kan. 79, 689 P.2d 778 (1984).
- 3 28 U.S.C.A. § 455(b)(5)(iii).
- 4 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(2)(c).
- 5 [Fry v. Tucker](#), 146 Tex. 18, 202 S.W.2d 218 (1947).
- 6 [Grubstake Inv. Ass'n v. Kirkham](#), 10 S.W.2d 184 (Tex. Civ. App. San Antonio 1928), writ refused, (Feb. 6, 1929).
- 7 [Hidalgo County Water Control and Imp. Dist. No. 1 v. Boysen](#), 354 S.W.2d 420 (Tex. Civ. App. San Antonio 1962), writ refused, (May 23, 1962).

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